The Honorable Brian D. Lynch
Chapter 11
Hearing Location: Tacoma, Courtroom I
Hearing Date: January 27, 2011
Hearing Time: 1:00 p.m.
Responses Due: January 25, 2011

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

In Re: HAWKS PRAIRIE INVESTMENT LLC, Debtor.	No. 10-46635-BDL HOMESTREET BANK'S OBJECTION TO ATTEMPTED WITHDRAWAL OF PLAN AND REQUEST TO ENFORCE COURT ORDERS

HOMESTREET BANK ("HomeStreet"), creditor herein, files this objection to the Debtor's attempt to withdraw its Plan of Reorganization dated December 14, 2010 (the "Plan") [Docket No. 104], and urges the Court to conduct the scheduled hearing on confirmation of the Plan and to confirm the Plan as follows:

I. BACKGROUND

This case was filed on August 13, 2010. Scott Griffin, through his counsel Arnold Willig, filed his appearance in the case on August 16, 2010 [Docket No. 7] and Mr. Willig has participated in this case continuously since that date. Following Scott Griffin's foreclosure of Tri Vo's membership interests in LLCs that controlled the Debtor, Mr. Willig appeared as counsel for the Debtor on January 6, 2011 [Docket No. 118].

This is a single asset real estate case in which the Debtor was required to file a confirmable plan within 90 days of the filing of its Petition. *See* Order Granting Motion for

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Application of the Single Asset Real Estate Rules [Docket No. 41]. The Debtor filed its initial plan and disclosure statement timely on November 11, 2010 [Docket Nos. 71, 72]. On December 13, 2010, the Court entered its Order Granting Motion for Relief from Stay to HomeStreet and secured creditors Howard Talbitzer and Anthony Glavin [Docket No. 91]. The Debtor filed the Plan and an amended disclosure statement (the "Disclosure Statement") on December 14, 2010 [Docket Nos. 103, 104].

HomeStreet Bank and the Debtor reached a settlement agreement relating to the Plan and the creditors' relief from the automatic stay. The settlement was submitted for Court approval. On December 15, 2010, the Court held a hearing on approval of the Disclosure Statement. On December 17, 2010, the Court entered its Order Approving Disclosure Statement and Setting Plan Confirmation Deadlines, and Notice Thereof (the "Confirmation Order") [Docket No. 107]. On December 17, 2010, the Court also entered its Order for Approval of Settlement Between Debtor and HomeStreet Bank on Shortened Time [Docket No. 110] and filed a Memorandum Decision related to said order [Docket No. 109].

The Confirmation Order set the hearing on confirmation of the Plan for January 27, 2011, at 1:00 p.m. In accordance with that schedule, the Debtor promulgated the Plan and Disclosure Statement with Ballots. Balloting was concluded on January 19, 2011. On January 20, 2011, without prior motion or any order of this Court, Mr. Willig filed and noticed a pleading purporting to withdraw the Plan and Disclosure Statement. That action was void and ineffective for the reasons set forth herein.

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II. ARGUMENT

2.1 The Withdrawal of the Plan and Disclosure Statement Was Not Effective

A. THE ATTEMPTED WITHDRAWAL OF THE PLAN AND DISCLOSURE STATEMENT VIOLATES THIS COURT'S ORDERS

1. Order Setting Confirmation Hearing

On December 17, 2010, this Court set the hearing on the confirmation of the Plan for January 27, 2010. *See* Docket No. 107. The new management of the Debtor does not have unilateral power to alter or violate said order without application to the Court. The Debtor did not seek the Court's approval to cancel or otherwise change the date of the confirmation hearing.

2. Settlement Agreement

The Settlement Agreement between HomeStreet and the Debtor, which was approved by the Court and is binding upon the Debtor regardless of the identity of its controlling member, prohibits any action to delay the case. Thus, as approved by the Court, the settlement agreement places certain constraints on the actions of the Debtor. The Debtor is constrained by the settlement agreement from attempting to derail Plan confirmation.

B. THE ATTEMPTED WITHDRAWAL OF THE PLAN AND DISCLOSURE STATEMENT VIOLATES THE SPIRIT OF THE COURT'S MEMORANDUM DECISION

In its Memorandum Decision, the Court recognized and relied upon the time constraints in this case. The urgency in this case does not arise out of the settlement agreement itself. Instead, that urgency arises out of the single asset rule, which requires expeditious formulation of a Plan that has a reasonable possibility of being confirmed within a reasonable time within the 90-day deadline. 11 U.S.C. § 362(d)(3).

2.2 A Continuance Of A Contested Matter Cannot Be Accomplished Unilaterally

A Plan confirmation hearing is a contested matter under the Bankruptcy Rules. As such, an effort to continue (or dismiss) the matter by unilateral action is not permitted under the Local Rules or under this Court's chambers procedures.

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2.3 The Debtor's Current Management Has Not Indicated Its Position On the Proposed Plan

Although it may not be evident based upon this objection and request that the Court enforce its prior orders, communications between the Debtor's present management and HomeStreet has been ongoing and cordial. The parties have agreed on selection of a real estate broker and are finalizing the terms of that broker's contract for submission to the Court. There have been communications regarding bidding procedures and pleadings related to the sale.

The Debtor's current management has not indicated to HomeStreet that any part of the Plan is objectionable. It has not done so despite the fact that it has participated in the case since August and had the Plan in hand since December 14, 2010. The Plan provisions are simple and straightforward. The Plan anticipates a sale of the property in accordance with the settlement agreement.

III. CONCLUSION

If new management has a substantive problem with the Plan, which was already disseminated to creditors and voted on, the management should be required to present those objections for the Court's review on January 27, 2011, at the scheduled confirmation hearing. The unilateral withdrawal of the Plan is not permitted for the reasons stated above. The Court should conduct the confirmation hearing as scheduled and, absent a clear and compelling cause to delay this case, the Court should confirm the Plan as submitted.

DATED this 21st day of January, 2011.

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/s/ Dillon E. Jackson

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